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**Attorney for Defendant**  
**DWEN EDWARD CURRY**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CR-09-0901 SBA</b>
	)	
<b>Plaintiff,</b>	)	
	)	<b>DEFENDANT'S SENTENCING</b>
<b>vs.</b>	)	<b>MEMORANDUM</b>
	)	
<b>DWEN EDWARD CURRY,</b>	)	<b>Date: January 11, 2011</b>
	)	<b>Time: 9:00 a.m.</b>
<b>Defendant.</b>	)	<b>Honorable Sandra Brown Armstrong</b>
_____	)	

Pending before the Court is a Proposed Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure which stipulates to an Adjusted Offense Level 22 pursuant to United States Sentencing Guideline (USSG) §2B1.1 based upon a guilty plea to Counts One and Two of the Indictment (Possession of Fifteen or More Unauthorized Access Devices (18 U.S.C. §1029(a)(3)) and Wire Fraud (18 U.S.C. §1343).) Under the terms of the proposed plea agreement, the parties agree that a reasonable and appropriate disposition of this case, under the Sentencing Guidelines and 18 U.S.C. § 3553(a) is at the low end of the Guidelines range for adjusted offense level 22 and the criminal history category to be determined by the Court.

Defendant Dwen Curry seeks to enter a plea of guilty to Counts One and Two of the

1 Indictment pursuant to the proposed plea agreement and be sentenced pursuant to its terms.

2 Defendant has no objection to the information contained in the Pre-Plea Presentence  
3 Investigation Report (PSR) prepared by U.S. Probation Officer Constance Cook. The PSR  
4 determines that the Adjusted Offense Level is 22 and the Criminal History Category is V (10  
5 points) (PSR ¶¶ 40 - 44) based upon a DUI conviction and three shoplifting offenses all  
6 committed when the defendant was severely addicted to prescription medications, Vicodin and  
7 Valium, and occurring within a short time period in 2006 when Defendant Curry was under the  
8 influence of his addiction.

9 In determining Defendant Curry's Criminal History Category under USSG § 4A1.1, the  
10 Court may conclude that Criminal History Category V over-represents the seriousness of the  
11 defendant's criminal history and determine that assignment of a criminal history category IV is  
12 appropriate under the Guidelines pursuant to USSG §§ 4A1.3 and 1B1(E).<sup>1 2</sup> In taking a close  
13 examination of his record, the Court may find that defendant Curry is a far cry from the typical  
14 defendant in Criminal History Category V. Two of the shoplifting offenses involving the  
15 attempted theft of a purse for which defendant Curry received a concurrent sentence on the same  
16 day (PSR ¶¶ 42, 43) result in 6 points under the sentencing guidelines. The additional  
17 shoplifting offense adds another 2 points under the guidelines (PSR ¶ 41) as does the DUI (PSR  
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19 <sup>1</sup> See, *United States vs. Reyes*, 8 F.3d 1379 (9th Cir. 1993) (court upholds downward  
20 departure – 210 months to 33 months – from career offender guidelines – in both offense level  
21 and criminal category – where defendant a comparatively minor offender – 6 minor drug and  
22 theft priors – but remands for court to state reason for extent of departure); In *U.S. v. Dickmann*,  
23 2007 WL 442397 (E.D. Wis. 2007), the court held that the defendant's criminal history category  
24 of IV over-represented the seriousness of the defendant's criminal past, justifying a one-level  
25 downward departure under U.S.S.G. § 4A1.3(b)(1), where all of the defendant's previous  
26 convictions were clustered during a time when the defendant's drug use caused his life to spiral  
out of control, and all of the prior convictions were for nonviolent offenses involving drug  
possession and petty theft.

<sup>2</sup> If the Court makes this finding, the sentence agreed upon in the proposed plea  
agreement would be 71 months rather than 77 months.

¶ 40).

Defendant Curry agrees with the government that in imposing a sentence, 18 U.S.C. § 3553(a)(1) instructs the Court to consider the “nature and circumstances of the offense” and the “need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” Title 18 U.S.C. § 3553(a)(1) also instructs the Court to consider “the history and characteristics of the defendant”. Before the Court is a man with a history of severe drug addiction and a serious medical condition. All of these reasons reflect the appropriateness of a sentence at the low end of the applicable guideline range as determined by the Court as a just and reasonable punishment. As a result, Defendant Curry respectfully requests that the Court accept the proposed plea agreement.

Dated: January 5, 2011

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GAIL SHIFMAN  
Counsel for Defendant CURRY